

**ORIGINAL**  
FILED  
July 26 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP-10-0294

LLOYD S. MAIER,

Plaintiff,

v.

THIRD JUDICIAL DISTRICT COURT,

Respondent.

**FILED**

JUL 26 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

**AFFIDAVIT OF JOAN BURKE IN RESPONSE TO PLAINTIFF'S  
PETITION FOR WRIT OF MANDAMUS, PURSUANT TO  
SUPREME COURT ORDER DATED JUNE 29, 2010**

STATE OF MONTANA    )  
                              :       ss.  
COUNTY OF POWELL    )

I, Joan Burke, being first duly sworn, upon my oath, depose and state:

1.     On June 29, 2010, the Montana Supreme Court ordered the Clerk of the Third Judicial District Court to file a response to Plaintiff's petition for a writ of mandamus [hereinafter, "Petition"] "explaining the justification for requiring inmates to sign all in blue ink, and refusing to file the documents Maier sent to the Clerk for filing." Order at 2. I am the duly elected Clerk of the Powell County District Court. Powell County is within Montana's Third Judicial District and is the County where the facts underlying Plaintiff's Petition apparently arose. I know the following matters of fact of my own personal knowledge, or, in the case

of information received from others, believe them to be true. I am competent to and will testify to these facts if called as a witness.

2. On March 11, 2010, I received a letter from the Plaintiff, dated March 10, 2010, asking why he had not heard from me regarding a "Motion for Leave to File" and that if he did not hear from me within 10 working days, he would file a Writ of Mandamus. The Court's records did not indicate there was any active case involving Plaintiff pending in the Powell County District Court. I searched the Court's files and determined that there was no "Motion for Leave to File" in the Court's files. [A true and correct copy of Plaintiff's March 10 letter is attached hereto as Exhibit A.]

3. On March 22, 2010, I sent a letter to the Plaintiff advising him that my office did not have the document, or any reference to it, in our files. I stated that, if the document had been sent to the Clerk's office, it was likely the document had been returned as it was not a proper initiating document for the Court to consider and that, generally, leave was not required to initiate an action. [A true and correct copy of my March 22, 2010, letter to Plaintiff letter is attached hereto as Exhibit B.]

4. Some time after my letter was sent to the Plaintiff, our office received documents from the Plaintiff. Plaintiff's Writ of Mandamus states that the documents sent were the "Leave the File" documents and I have no reason to believe otherwise.

5. On April 16, 2010, Polly Green, Deputy Clerk of the Powell County District Court, returned the documents to Plaintiff with a cover letter stating that the documents were being returned because they were not proper for commencement of a new action. The letter also asked Plaintiff to "please sign all the originals in blue ink so we will know that your documents are not copies," and advised that Plaintiff would need to "follow the Rules of Civil Procedure to find out the proper procedure on filing a civil matter." [A true and correct copy of Ms. Green's April 16, 2010, letter to Plaintiff is attached hereto as Exhibit C.]

6. Uniform District Court Rule 1 (Title 25, Chapter 19, MCA) requires original documents be filed with the District Court and copies be served on others. *See* Rule 1(d). Because it is often difficult - and many times impossible - to determine if a signature in black pen is an original or a xeroxed copy, the Powell County District Court requests that all parties, not just prisoners, sign original documents filed with the District Court in blue pen. This is so that the Court knows that what has been filed is the original document and not a copy.

7. Plaintiff's document titled "Leave to File" is captioned *Lloyd S. Maier, Plaintiff, -v- Julie and Craig Thomas Board of Pardons and Parole Dr. Mozier Mental Heath [sic], State Prison, Montana, Defendants*. Based on my training and experience as the Powell County Clerk of Court, this indicates a civil matter. Montana Rule of Civil Procedure 3 states that a civil action "is commenced by filing a complaint with the court." Because the document sent by

Plaintiff was not in the form of a complaint, as set forth in Rule of Civil Procedure 3, it was returned to Plaintiff.

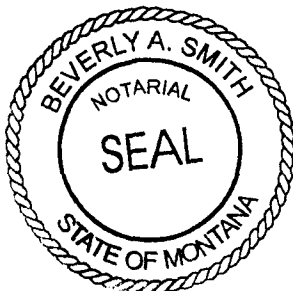
8. Plaintiff's Writ of Mandamus states on page 2 that "[t]his [Leave to File] is a criminal matter not a civil matter." Section 7-4-2712 of the Montana Code Annotated sets forth that it is the duty of the county attorney to prosecute criminal offenses. If it had been clear from looking at the document that Plaintiff intended the "Leave to File" to be the filing of criminal charges, our office would still have returned the "Leave to File" to Plaintiff as it is my understanding based on my training and experience, and relevant sections of the Montana Code Annotated, that civilians cannot initiate criminal charges in Montana.

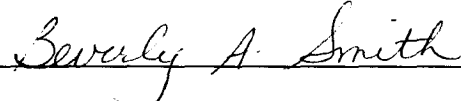
  
Joan Burke

STATE OF MONTANA     )  
                                      : ss  
COUNTY OF POWELL    )

On this 26<sup>th</sup> day of July, 2010, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Joan Burke, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.



  
\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

BEVERLY A. SMITH  
NOTARY PUBLIC for the State of Montana  
Residing at Deer Lodge, Montana  
My Commission Expires August 1, 2011

**EXHIBIT A**

Joan Burke  
Clerk of Court

3/10/10

ON January 20, 2010 I file a motion  
for Leave to file.

I still have not heard from you  
IS there something wrong or do I  
Need To file a Writ of Mandamus.  
It would be nice to hear anything  
from you.

IF I don't hear from you within  
10 working days I will file Mandamus.

Thank you for your Time.

Lloyd S. Mauer #21995  
700 Conley Lake Rd.  
Deer Lodge, MT.

59722

Deer Lodge, MT 59722

**received**  
03-11-10



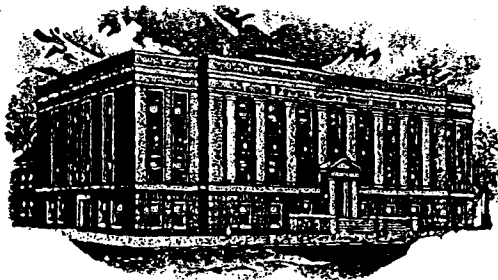
Vinny  
Clerk of District Court  
Joan Burke  
409 Missouri Ave.  
Deer Lodge, Montana

0972251074

59722

**EXHIBIT B**





DEER LODGE, MONT.

March 22, 2010

Lloyd S. Maier  
AO #21995  
Montana State Prison  
700 Conley Lake Road  
Deer Lodge, MT 59722

Dear Mr. Maier,

I have received your letter dated March 10, 2010 regarding a motion for leave to file. This office does not have the document that you refer to in your letter or any reference to it in our files or other Court files. Based solely on the title, it is likely that if you sent this document to this office it would have been returned to you because it is not a proper initiating document for the Court to consider. Generally speaking, leave is not required to initiate an action.

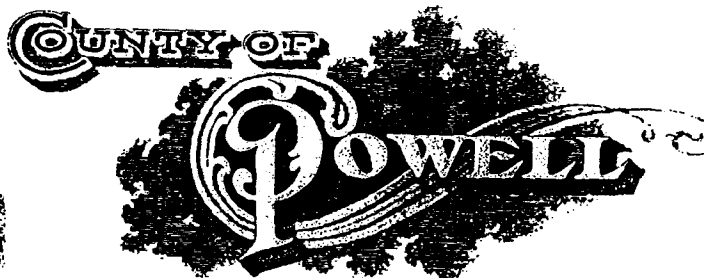
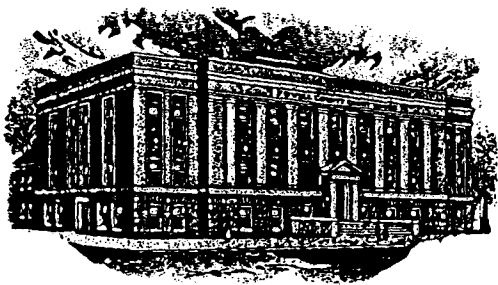
It is possible that what you have sent has been lost in transit. If that is the case, I am sorry for the inconvenience, but without any documentation, it is impossible for this office to do anything further for you. If you re-sent your information and it complies with the Rules of Civil Procedure or with any relevant statutes, we would be happy to file it for the Court's consideration.

If you feel that you have been wronged, the best course of action is the consult with an attorney.

Sincerely,

Joan Burke  
Clerk of District Court

**EXHIBIT C**



DEER LODGE, MONT.

April 16, 2010

Lloyd S. Maier  
AO #21995  
Montana State Prison  
700 Conley Lake Road  
Deer Lodge, MT 59722

Dear Mr. Maier:

I am returning the enclosed documents we received from you for your paper work is not proper for a commencement of a new action. First, please sign all the originals in blue ink so we will know that your documents are not copies and we can only file originals. Also you will need to follow the Rules of Civil Procedure to find out the proper procedure on filing a civil matter.

I would recommend contacting an attorney or checking with Montana Law Library for legal advice to filing your documents to make sure everything is done correctly and in the proper order.

Sincerely,

Polly Green  
Deputy Clerk of District Court


## **CERTIFICATE OF SERVICE**

I, L. Jeanine Badanes, Deputy Powell County Attorney, hereby certify that a true copy of the foregoing AFFIDAVIT OF JOAN BURKE IN RESPONSE TO PLAINTIFF'S PETITION FOR WRIT OF MANDAMUS, PURSUANT TO SUPREME COURT ORDER DATED JUNE 29, 2010, was mailed to the following by depositing a copy in the U.S. Mail, postage prepaid, this 26th day of July, 2010:

Lloyd S. Maier - AO # 21995  
Montana State Prison  
700 Conley Lake Road  
Deer Lodge, MT 59722

Mike Mahoney, Warden  
Montana State Prison  
400 Conley Lake Road  
Deer Lodge, MT 59722

Montana Board of Pardons and Parole  
1002 Hollenbeck Road  
Deer Lodge, MT 59722

  
\_\_\_\_\_  
J. Jeanine Badanes  
Deputy Powell County Attorney